

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

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|------------------------------|---|------------------|
| GLOBAL NAPS, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | Civil Action |
| vs. |) | No. 02-12489-RWZ |
| |) | |
| VERIZON NEW ENGLAND, INC., |) | |
| d/b/a VERIZON MASSACHUSETTS, |) | |
| et al, |) | |
| |) | |
| Defendants. |) | |

RECEIVER'S MOTION TO AUTHORIZE SALE OF AIRCRAFT

BEFORE THE HONORABLE RYA W. ZOBEL
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
John J. Moakley U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts 02210
February 22, 2011
2:30:00 p.m.

* * * *

CATHERINE A. HANDEL, RPR-CM, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
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1 APPEARANCES:

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9 For the Defendant Verizon:

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15 For Interested Party Arltek Holdings, Inc.:

16 FOX ROTHSCHILD LLP

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21 For Interested Party
22 Pro Star Pilatus Center LLC:

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(Appearances continued on next page.)

1
2 APPEARANCES: (Cont'd)

3
4 For the Receiver:

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8
9 -and-

10 LAW OFFICES OF STEVEN J. MARULLO
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13
14
15 ALSO PRESENT:

16 CBIZ Tofias
17 By: Carl F. Jenkins, Receiver
350 Massachusetts Avenue
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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Rya W. Zobel, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on February 22, 2011.)

THE COURT: Good afternoon. Please be seated.

MR. LIBBEY: Good afternoon.

COURTROOM DEPUTY URSO: This is Global NAPS versus Verizon, Civil Action No. 02-12489. If counsel could, please, identify themselves for the record.

THE COURT: We have for the receiver, Mr. Libbey. And Mr.?

MR. MARULLO: Marullo, your Honor.

THE COURT: Marullo?

MR. MARULLO: Steven Marullo, yes.

THE COURT: The motion is the receiver's motion to authorize the sale of aircraft, free and clear of all claims and liens. Is there anyone here who is opposing the motion?

MR. OSTERBERG: Yes, your Honor.

THE COURT: Mr. Osterberg.

MR. OSTERBERG: Eric Osterberg for Arltek Holdings, Incorporated.

THE COURT: I'm sorry. The name of your -- Arltek?

MR. OSTERBERG: Yes. We submitted opposition on ECF.

1 THE COURT: Any other opposition to the motion?

2 (No response.)

3 THE COURT: Anybody in support of the motion or, Mr.
4 Weigel, are you observing?

5 MR. WEIGEL: We're very much in favor of selling the
6 planes, your Honor, and we're also in favor of getting the
7 highest price possible. I did understand there was another
8 bidder, who has not -- I don't know if he understands that he
9 was opposing the motion by submitting a bid.

10 THE COURT: No. He understands.

11 MS. LYNCH: Hi, your Honor. Christine Lynch,
12 Goulston Storrs, on behalf of Pro Star Pilatus, which is the
13 initial bidder in this matter.

14 THE COURT: Okay. Tell me your name again, please.

15 MS. LYNCH: It's Christine Lynch.

16 THE COURT: Lynch. All right.

17 Mr. Jenkins, will you speak for the receiver or will
18 Mr. Libbey?

19 MR. LIBBEY: For the time being, your Honor, I'll
20 speak for the receiver, your Honor.

21 THE COURT: Okay.

22 MR. LIBBEY: Your Honor, we're here today on the
23 receiver's motion to sell the aircraft with a stalking-horse
24 bid from Pro Pilatus, which was submitted to the Court, along
25 with several orders with respect to notice, et cetera.

1 In the interim period, we received two other bids;
2 one from Skytech, Inc. and -- the Skytech folks were supposed
3 to bring a certified check, your Honor. He's here. He has
4 it. Very good. And Mr. Osterberg's client, Arltek, submitted
5 also a competing bid.

6 If the Court would like, I can hand up copies of the
7 bids, because you likely have not seen all three, your Honor.
8 I'd be happy to do that and just go through them quickly, if
9 you would like.

10 THE COURT: Okay.

11 (Attorney Libbey hands documents to the Court.)

12 MR. LIBBEY: The original bid, your Honor, which was
13 submitted with the receiver's motion, was from Pro Star
14 Pilatus. They submitted a bid for \$4.6 million for both
15 aircraft, split at \$3.4 million for the Cessna jet and \$1.2
16 million for the Pilatus turbo --

17 THE COURT: They're going as a bundle, right?

18 MR. LIBBEY: That's correct, your Honor.

19 THE COURT: You're not selling them separately?

20 MR. LIBBEY: That's correct, your Honor.

21 THE COURT: Okay.

22 MR. LIBBEY: That's how the bid was submitted.

23 The contingencies with respect to the Pilatus bid,
24 your Honor, was an inspection, once the Court had approved
25 their bid, and a pre-flight -- or a flight test as well,

1 certifications that go with the planes, spares parts, et
2 cetera. Subject to -- also to a bill of sale and other
3 related transaction documents.

4 As part of that bid, your Honor, there was a \$50,000
5 break-up fee in the event that Pro Star Pilatus was not the
6 successful bidder to pay for their due diligence in submitting
7 their bid, legal fees, et cetera.

8 The other aspect --

9 THE COURT: You mean you're supposed to pay them if
10 they're not successful?

11 MR. LIBBEY: Correct, your Honor. We made a
12 condition on any other bidder that they would cover that
13 particular contingency. So that the receiver would not be out
14 of pocket, so to speak, or the receivership would not be out
15 of pocket for that.

16 The other aspect of the Pro Pilatus bid is that there
17 is a broker's fee or a finder's fee to the gentleman who
18 introduced Pro Pilatus to the sale of the planes in the amount
19 of four percent or \$180,000. So, that's part of their bid.

20 The second bid we received, your Honor, was from
21 Arltek, Mr. Osterberg's client, and the difference between the
22 Pro Pilatus and the Arltek is that Pro Pilatus was an asset
23 purchase, your Honor. They were just purchasing the assets of
24 the existing receivership companies, CJ3, Inc. and RJ
25 Equipment. Arltek has offered to buy the existing companies

1 or shares of the companies because they would like to try to
2 -- or they want to assume the existing debt, which as of today
3 is about \$1,040,000 on the CJ3.

4 THE COURT: Wait a minute. Say that again. Arltek
5 wants to pay for the entire company that owns the airplanes?

6 MR. LIBBEY: Yes, rather than --

7 THE COURT: Including the airplanes and all other
8 assets?

9 MR. LIBBEY: Correct, your Honor, for the two
10 corporations, the shares. And one of the reasons we
11 understand they're doing that is because they want to assume
12 the existing financing on the Cessna jet, which is a little
13 over a million dollars still owing on that particular --

14 THE COURT: So, what are they offering?

15 MR. LIBBEY: They're offering 4.85 million, your
16 Honor. Their bid includes no inspection or test flight and
17 they -- the only other aspect that they're looking for is the
18 removal or modification of certain of the injunctions that are
19 in place in this case as well as a case in front of Judge
20 Gorton in order to facilitate -- my understanding, to finance
21 the planes and close the deal.

22 The third bid, your Honor, was from Skytech, which is
23 a Mid-Atlantic company out of Baltimore, that offered
24 \$4,725,000, and their bid is subject to the same conditions as
25 the Pro Pilatus closing, of a test flight and inspection, et

1 cetera. And those are the three bids that are presently
2 before the Court.

3 And the receiver -- if you recall, your Honor, one of
4 the aspects of the objection was in the form of higher bids.
5 We do have objections in the form of higher bids from two of
6 the bidders, and the receiver, in submitting his motion to the
7 Court and in the Court's initial order on notice, the
8 provisions were that the receiver, in the best interest of the
9 estate, could accept other bids, could hold an auction, either
10 by sealed bid, or otherwise, in order to maximize the value of
11 the sale of these assets.

12 At this time, your Honor, the receiver would like to,
13 with the Court's permission, do a sealed bid with the existing
14 bidders, if they choose to, so that he can maximize the value
15 of the existing aircraft assets.

16 THE COURT: I assume there's no objection.

17 MR. OSTERBERG: Well, your Honor, we object because
18 we've just had a sealed bidding process and we're the high
19 bid.

20 THE COURT: Well, you're in a peculiar position now
21 because your bid is different from the other two bids.

22 MR. OSTERBERG: Not in any material respect, your
23 Honor. There's -- one of the conditions that the receiver
24 asked us to comply with in terms of making our bid was that we
25 identify the assets that we would be getting as a result of

1 the stock purchase.

2 THE COURT: But one needs to distinguish between the
3 assets that you would be getting under your bid and the assets
4 that the other bidders are getting under their bids.

5 MR. OSTERBERG: But there really is no material
6 distinction. These are single-purpose entities. That's all
7 they do. They own these aircraft. They have aircraft. They
8 have records. They have, you know, whatever sort of sundry
9 things go with the aircraft. It's my understanding that's
10 what's being purchased by everybody else and that's what would
11 be purchased by us. The only thing that I can think of that's
12 really a difference is the name of the company.

13 And the reason that we wanted to do it the way it is,
14 is because we have -- because in place for each of those
15 companies are the maintenance agreements, the financing for
16 the CJ3. All of that various -- those various things are in
17 place. So, for us -- you know, we just assume keep all of
18 that going rather than starting from square one. So, there's
19 really no difference in what's being purchased here.

20 THE COURT: Well, in that case, would you be quite
21 willing to just buy the airplanes without the company for the
22 same price?

23 MR. OSTERBERG: We would be willing to buy the
24 airplanes and then the various asserted things that go with
25 them, the documents, the -- you know, the assets of the

1 company as opposed to the stock.

2 THE COURT: Ms. Lynch.

3 MS. LYNCH: Your Honor, based on the initial
4 structure, at least, of the Arltek bid, we do think that it's
5 materially worse than our -- my client's bid. We understand
6 that Arltek was just formed recently, February 2nd of 1211.
7 We understand that Mr. Gangi or his relative is somehow
8 affiliated with this entity.

9 We understand that Arltek has not presented any
10 evidence to the receiver that it has the ability to consummate
11 the sale, and Arltek's bid does state that it will assume the
12 indebtedness to Cessna Finance. Well, Cessna would have to
13 consent to that for that to actually happen. So, we
14 understand that that has not occurred.

15 So, we're not -- we take the position that their bid
16 is not a qualified bid, your Honor. The bid procedures -- you
17 say that the bids have to be on the same terms and conditions
18 as the initial bid and theirs was not.

19 THE COURT: Well, I understand that Mr. Osterberg now
20 says he is prepared to bid the same amount, but on the same
21 terms as the other bidders. That is, not the company, but
22 only the airplanes, subject to the same conditions that you
23 are subject to or agreed to.

24 MS. LYNCH: Well, I think that raises the question
25 whether there is a financing constituency to his client's bid,

1 because I think they were proceeding on the assumption that
2 they could assume the financing that was in place. So, that
3 raises to my mind a question of whether they even have the
4 money to buy these planes.

5 THE COURT: Mr. Libbey.

6 MR. LIBBEY: Your Honor, we wouldn't take a position
7 on that because the bids require a closing within 30 days. If
8 they've got to getting financing, that's on theirs. They put
9 at risk \$50,000 as a deposit. So, our belief right now is the
10 bids have to stand on their own based on what's been presented
11 to the Court.

12 THE COURT: Mr. Weigel.

13 MR. WEIGEL: Your Honor, I would -- obviously,
14 Verizon wants to get the highest price possible.

15 THE COURT: Yes, but what do we do? What's your
16 suggestion as to how we should proceed?

17 MR. WEIGEL: I would go along with Mr. Libbey's
18 suggestion that we -- you know, that -- I believe that the
19 order he submitted provided for just this possibility. In
20 fact, no one would ever be in a position of stalking-horse
21 bidder if they didn't have the opportunity to increase their
22 bid. The whole point of this is to get the highest price for
23 the assets.

24 I agree -- I have some concerns. Arltek is somehow
25 related to Mr. Gangi. I mean, I don't -- I know that in my

1 stomach. I can't prove it to you, but I suspect that, and --
2 but, you know, the money is green, if he comes up with it, and
3 if it's done in 30 days, great. I do fear that if they're the
4 winning bidder, that we might be back here again with one less
5 bidder the next time, but at least --

6 THE COURT: Well, it seems to me that we should
7 proceed with the bidders who are here today, and I see no
8 reason why we could not also include in an order a provision
9 that if within 30 days the person who is today deemed to be
10 the winner drops out or can't go forward, that the next
11 highest bid is the one who wins. I mean, is there any problem
12 with that?

13 MS. LYNCH: Well, your Honor, if we're forced into
14 the position of bidding against a bidder that may not be a
15 legitimate bidder, by that I mean cannot close, I'm not sure
16 that --

17 THE COURT: I'm not assuming that.

18 MS. LYNCH: Right, but then we're going to be
19 proceeding into a process where we're bidding against someone
20 who may not be able to close. And so, our bid is going up and
21 then we're forced to be bound to that bid when the process
22 itself may not have been legitimate.

23 THE COURT: No. The process itself isn't being
24 changed. It's just that -- it could be that you're the
25 winning bidder and something happens and you can't go forward,

1 in which case rather than having a new set of bidding, we will
2 simply go to the next bidder. We're not assuming that the
3 process will not lead to a closing with the bidder who is the
4 winning bidder today. We're not assuming that at all. We're
5 simply providing for the possibility of such contingencies.

6 Now, Mr. Libbey, what about the fact that there is a
7 difference in not just money, but in other areas between
8 Arltek and the other two, in that Arltek wanted to buy the
9 company? If, in fact, Arltek now were in the next round to
10 bid simply for the airplanes, as did everybody else, would
11 that -- would you care whether it's the company or the
12 airplanes?

13 MR. LIBBEY: No, your Honor. It would actually be
14 easier for the receiver to just sell the assets rather than
15 the companies. So, he would be in favor of that, and I think
16 it makes the bids apples to apples rather than apples to
17 pears, so to speak. Would that different aspect --

18 THE COURT: I mean, if two of them bid for the
19 airplanes and one bids for the company?

20 MR. LIBBEY: Well, I think Mr. Osterberg -- correct
21 me if I am wrong -- has indicated that he would just bid for
22 the aircraft in a sealed bid.

23 THE COURT: That's what I'm asking you. Is that
24 better for the receiver?

25 MR. LIBBEY: It's more economical for the receiver,

1 your Honor, because it's an easier transaction.

2 THE COURT: Well, then I think that's what we should
3 do, because it's not appropriate to compare a bid for the
4 company with a bid for the airplanes. So, we should go
5 forward with bids for the airplanes only.

6 MR. OSTERBERG: Your Honor, if I may.

7 I just wondered if we could probe Mr. Libbey a little
8 bit about why it's less economical to sell the stock. It's
9 just I'm selling the stock, I'm selling the aircraft --

10 THE COURT: Well, because --

11 MR. OSTERBERG: -- with the stock he doesn't have to
12 worry about anything other than --

13 THE COURT: Well, it's a request for the bids for the
14 airplane, not for the company.

15 MR. OSTERBERG: Very well, your Honor.

16 THE COURT: You can negotiate separately for the
17 company if you are the winning bidder, but, at the moment,
18 we're talking about the airplanes only, and that was what was
19 put out for bid in the first place.

20 And I think we should go forward with a last round of
21 bidding. So that those of you who are interested, submit a
22 closed bid and I will receive it and tell you who won.

23 MR. LIBBEY: Your Honor, I think maybe we could take
24 a short recess and counsel and the parties may be able to
25 figure out the process we're going to use here.

1 THE COURT: By all means, you go right ahead and do
2 that and let me know when you're done.

3 MR. LIBBEY: Thank you.

4 THE COURT: We may have to give up the courtroom
5 temporarily because one of my colleagues is using it and he
6 has a deliberating jury that may or may not have a verdict,
7 but if so, we'll find another place.

8 (Discussion off the record.)

9 THE COURT: Court is in recess.

10 Let me know. I assume you won't be much more than
11 10, 15 minutes, right?

12 MR. LIBBEY: I don't believe so, your Honor.

13 (Recess taken.)

14 THE COURT: Please be seated.

15 Before I look at these, let me make sure that I
16 understand exactly where we are.

17 As I understand, that whatever Pilatus bids is to be
18 reduced by -- you called it a finder's fee, but is it a
19 brokerage fee, a broker's fee?

20 MR. LIBBEY: Yes, it is, your Honor. I don't know if
21 that's --

22 THE COURT: So, whatever number you gave me is to be
23 reduced by a broker's fee that you would have to pay?

24 MS. LYNCH: Well, that the receiver would otherwise
25 have to pay, but that receiver's fee has been adjusted -- I

1 understand it's been adjusted from what the original agreement
2 was. So, originally the finder's fee was to be four percent
3 of the purchase price and it's been reduced to a flat fee of
4 \$150,000.

5 THE COURT: Okay. So, whatever number is in this
6 sealed bid, it has to be less than \$150,000 to be comparable
7 to the others?

8 MS. LYNCH: Yes, and we wrote that out. We did the
9 gross bid, less the finder's fee, for a net bid.

10 THE COURT: Okay. And both Skytech's and Arltek's
11 number has to be reduced by \$50,000 each, which would have to
12 be paid under your agreement with Pilatus to Pilatus?

13 MR. LIBBEY: Correct, your Honor.

14 THE COURT: And in other respects, the conditions are
15 substantially identical?

16 MR. LIBBEY: They are, your Honor, as far as I
17 understand.

18 THE COURT: Okay. Hold your breath.

19 (Examining). It's appropriate to reduce Skytech and
20 Arltek by 50 to be comparable with Pilatus, correct? I mean,
21 that would be the net that's comparable to their net?

22 MR. LIBBEY: Correct, your Honor.

23 THE COURT: (Examining) I will read you the amounts
24 in the order in which I have opened the bids.

25 Pilatus, \$5,180,000, less 150,000. \$5,030,000.

1 Skytech, \$4,825,000, less the 50. \$4 million -- if
2 my arithmetic is correct -- 775,000.

3 Arltek, \$4,875,069, less 50,000. \$4,825,069.

4 These numbers suggest that Pilatus is the winner.

5 MR. LIBBEY: If your math is correct, your Honor, and
6 I believe it is.

7 THE COURT: Well, I will publish the bids and you're
8 all welcome to check the arithmetic, which wasn't much because
9 Pilatus did its own arithmetic.

10 MS. LYNCH: Your Honor, there was one additional term
11 for Pro Star Pilatus' bid. It was that if we were the winning
12 bidder, that the aircraft would be secured as soon as possible
13 and no later than -- I believe it was Friday.

14 THE COURT: Than?

15 MS. LYNCH: Than Friday. No later than Friday.

16 THE COURT: Any reason why that can't be done?

17 MR. LIBBEY: No, your Honor.

18 THE COURT: It will be done.

19 MS. LYNCH: Thank you, your Honor.

20 (Attorneys examine bids.)

21 MR. MARULLO: Your Honor, if I may. While they're --

22 THE COURT: No, wait a minute. Let them do their
23 math in peace and quiet, please, Mr. Marullo.

24 (Attorneys continue to examine bids.)

25 THE COURT: Now, two other things.

1 As I understand it, if for some reason the sale would
2 not -- does not close in 30 days, then the winner would be
3 Arltek, as the next highest bidder.

4 MS. LYNCH: Exactly.

5 THE COURT: Agreed?

6 MR. LIBBEY: Correct, your Honor.

7 THE COURT: And, finally, is there any reason why I
8 cannot accept the proposed order that the receiver has given
9 me with respect to this?

10 MR. MARULLO: The only thing I was --

11 THE COURT: Mr. Marullo.

12 MR. MARULLO: The only thing I was going to suggest,
13 your Honor, was that we change the order to include the next
14 highest bidder, unless you want to write that into the order
15 that we gave you.

16 THE COURT: All right. Give me the language.

17 They have a verdict?

18 COURTROOM DEPUTY URSO: Yes.

19 THE COURT: We're almost done.

20 COURTROOM DEPUTY URSO: Yes, I just said that.

21 THE COURT: The correct name of Pilatus is Pro Star
22 Pilatus Center?

23 MS. LYNCH: Yes.

24 THE COURT: Okay. I will fill that in. And what's
25 the language you want me to put in there?

1 MR. MARULLO: Probably something simple like you
2 suggested, your Honor, which is, "If Pro Star Pilatus fails to
3 close within 30 days of this order, the next" --

4 THE COURT: The order will be dated today.

5 MR. MARULLO: Right. So, within 30 days of today,
6 Arltek's bid will be accepted as the highest bid at that
7 point.

8 THE COURT: Okay.

9 MR. MARULLO: And they will be expected to close
10 within 30 days of that date.

11 THE COURT: All right.

12 MR. MARULLO: Thank you, your Honor.

13 THE COURT: I thank you all.

14 MR. LIBBEY: Thank you very much, your Honor.

15 THE COURT: Especially the receiver. Obviously,
16 you've done a lot of hard work.

17 MR. JENKINS: Thank you.

18 THE COURT: And, Mr. Osterberg, I would like to see
19 you just briefly on a matter not related to this case.

20 Court is in recess.

21 MR. LIBBEY: Thank you, your Honor.

22 (Adjourned, 3:36 p.m.)
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24
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C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 20, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of Civil Action No. 02-12489-RWZ, Global NAPS, Inc. vs. Verizon New England, Inc., et al.

April 20, 2011
Date

/s/ Catherine A. Handel
Catherine A. Handel, RPR-CM, CRR